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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,295	12/31/2003	Peiguang Zhou	19924	9196

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EXAMINER	
STEELE, JENNIFER A	

ART UNIT	PAPER NUMBER
1771	

MAIL DATE	DELIVERY MODE
08/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,295	ZHOU ET AL.	
	Examiner	Art Unit	
	Jennifer Steele	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-13,16-21 and 23-35* is/are pending in the application.

4a) Of the above claim(s) *26-35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-13,16-21 and 23-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

1. Claim 1-5, 6-13, 16-21, 23 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Mleziva (US 6057024) as in view of Mormon (US 4,657,802) in further view of Schmidt (US 4460728) and Gage (US 5,459,186). The previous Office Action rejection of 2/20/2007 is maintained.

2. Claim 25 rejected under 35 U.S.C. 103(a) as being unpatentable over Mleziva (US 6057024) as in view of Mormon (US 4,657,802), Schmidt (US 4460728) and Gage (US 5,459,186) as applied to claims 1-5, 7-13, 16-18 and 24 above and in further view of Shawver (US 6909028). The previous Office Action rejection of 2/20/2007 is maintained.

Double Patenting

3. Claim 1-5, 7-13, 16-21 and 23-24 of this application conflict with claim 1, 9 and 12 of Application No. 11/011439. The previous Office Action rejection of 2/20/2007 is maintained.

4. Claim 1-5, 7-13, 16-21 and 23-24 of this application conflict with claim 1-20 of Application No. 11/070307. The previous Office Action rejection of 2/20/2007 is maintained.

Response to Arguments

5. Applicant's arguments filed 5/18/2007 have been fully considered but they are not persuasive. Applicant argues that the meltblown nonblocking layer of Mormon is not the equivalent of applicants' nonblocking agent. Mormon teaches the feature of a polyolefin antiblocking layer of varying thicknesses. Applicant states that Mormon's layer is a second fibrous nonwoven gatherable web of a basis weight of 21 grams per square meter (gsm) which is not equivalent to the applicants meltblown nonblocking agent. The second fibrous nonwoven layer of Mormon is applied to reduce roll blocking, has the same structure as the Applicants and therefore it would have been obvious to reduce the amount of the layer to reduce the weight of the fabric yet still maintain the function of roll blocking. In addition, Mormon teaches varying the layer thickness of the layers to achieve desired weight (col. 27, lines 20-40).

6. Applicant argues that Mormon teaches a stacking configuration where additional layers of nonwovens are bonded to the laminate and that adding additional layers

teaches away from Applicants' single sided laminate. Examiner referenced col. 27 and lines 20-40 in order to reference that Mormon teaches varying the layer thickness of the layers to achieve desired weight (col. 27, lines 20-40). So while Mormon teaches a 21gsm layer, the layer weight can be varied and the number of layers can be varied.

7. Applicant argues that the Gage reference is directed to a peelable thermoplastic film which is not analogous to Applicants' claimed invention. In response to applicant's argument that a film is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Gage reference is directed to a thermoplastic material that is rolled and requires the addition of an antiblocking agent in order to unroll the film. While a film and a meltblown layer are not equated in the art as being the same structure, knowledge of rolling a thermoplastic layer material so that it can unroll is the same field of endeavor and the knowledge that a roll of material must unroll and requires a layer of antiblocking agent as taught by Gage is therefore considered prior art that provides knowledge of a predictable result.

8. Applicant argues that the Schmidt reference does not disclose or suggest a single sided elastic laminate that includes a meltblown nonblocking agent. In this case, Examiner references Schmidt for teaching a hot melt adhesive with an open time of 5 to 10 seconds. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Schmidt is drawn to applications for layered materials for use in diapers as in the current application.

9. Applicant argues that the reasoning that Mleziva in view of Mormon, Schmidt, and Gage does not disclose or suggest the Applicants' invention, the rejection of Mleziva in view of Mormon, Schmidt, and Gage in further view of Shawver also be withdrawn. For reasons stated above, Examiner maintains the rejection of Mleziva in view of Mormon, Schmidt, and Gage and further maintains the rejection over Mleziva in view of Mormon, Schmidt, and Gage in further view of Shawver.

10. Applicants arguments that the double patenting rejections over 11/011,439 and 11/070,307 be withdrawn are not persuasive. Examiner maintains current Office Action rejection and the amendments are not sufficient to overcome the 35 USC 103(a) rejections.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Steele whose telephone number is (571) 272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth M. Cole/

Primary Examiner, Art Unit 1771

7/30/2007